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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 BRIAN BALLENTINE, an individual;
9 CATALINO DAZO, an individual; KELLY
PATTERSON, an individual; and GAIL
SACCO, an individual,

10 Plaintiffs,

Case Number:
2:14-cv-01584-APG-EJY

11
12 **JOINT PRE-TRIAL ORDER**

13 vs.
14 LAS VEGAS METROPOLITAN POLICE
15 DEPARTMENT, in its official capacity;
16 DETECTIVE CHRISTOPHER T. TUCKER,
as an individual and in his official capacity as
a Las Vegas Metropolitan Police Department
17 Detective; SERGEANT MIKE WALLACE,
as an individual and in his official capacity as
a Las Vegas Metropolitan Police Department
Sergeant; and LIEUTENANT JOHN
LIBERTY, as an individual and in his official
capacity as a Las Vegas Metropolitan Police
18 Department Lieutenant,

19 Defendants.

20 **I. NATURE OF THE ACTION**

21 **A. BACKGROUND**

22 This is a 42 U.S.C. §1983 First Amendment retaliatory arrest lawsuit. The only
23 remaining claim for trial is whether LVMPD Detective Christopher Tucker (“Detective
24 Tucker”) violated the Plaintiffs’ First Amendment rights when he obtained arrest warrants for
25 the Plaintiffs’ arrests for chalking anti-police messages on the sidewalk. An issue of fact
26 remains as to whether Detective Tucker obtained the arrest warrants in retaliation for the
27

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1 Plaintiffs involvement in anti-police groups and for chalking anti-police messages. *See*
 2 *Ballentine v. Tucker*, 28 F. 4th 54 (9th Cir. 2022).

3 **B. PROCEDURAL HISTORY**

4 Plaintiffs filed their original complaint on September 26, 2014. (ECF No. 1) On
 5 November 4, 2014, Defendants moved for dismissal of a number of plaintiffs' claims and for
 6 qualified immunity. In its order on defendants' motion to dismiss, this court found probable
 7 cause existed for the plaintiffs' citations and arrests and/or qualified immunity protected the
 8 officers because a reasonable officer could believe using chalk on a public sidewalk
 9 constituted defacement under NRS 206.330. (ECF No. 36 at 9-11.) The first order dismissed
 10 a number of causes of action including plaintiffs' Fourth Amendment claim (fifth cause of
 11 action), false imprisonment claim (eleventh cause of action), unlawful detention claim
 12 (seventh cause of action), substantive and procedural due process claims (sixth and eighth
 13 causes of action) and negligence claims (tenth cause of action). (*Id.* at 16-17) Further, the
 14 court dismissed the official capacity claims against the defendants. (*Id.*)

15 On December 9, 2016, after the close of discovery, the defendants moved for summary
 16 judgment on all remaining claims and again raised the affirmative defense of qualified
 17 immunity. On August 21, 2017, this court granted in part and denied in part defendants'
 18 motion for summary judgment. (ECF No. 207) Specifically, this court entered summary
 19 judgment in favor of defendants Wallace, Liberty and LVMPD finding there was no evidence
 20 to support any of the alleged claims against those defendants. (*Id.* at 8-10.) However, this
 21 court denied summary judgment to defendant Detective Tucker on plaintiffs' First
 22 Amendment retaliation/chilling claim finding that the case of *Ford v. City of Yakima*, 706 F.3d
 23 1188 (9th Cir. 2013), clearly established that it is unconstitutional to arrest an individual for
 24 retaliatory motive, even if probable cause exists.

25 Detective Tucker appealed to the Ninth Circuit. After the appeal was fully briefed, the
 26 Supreme Court issued its decision in *Nieves v. Bartlett*, 587 U.S. ___, 139 S.Ct. 1715 (2019).
 27 The Ninth Circuit vacated and remanded the appeal back to this Court in light of *Nieves*. After
 28 another round of briefing, this Court, on August 20, 2020, held that Detective Tucker was

1 entitled to qualified immunity because the law governing First Amendment retaliation claims
 2 was not clearly established. (ECF No. 237.)

3 Plaintiffs then appealed the Court's second summary judgment order (ECF No. 237)
 4 to the Ninth Circuit. After briefing and oral argument, the Ninth Circuit, in a published
 5 opinion, affirmed in part, reversed in part, and remanded. *See Ballentine v. Tucker*, 28 F. 4th
 6 54 (9th Cir. 2022). The Ninth Circuit held that a reasonable factfinder could conclude that
 7 Detective Tucker violated the Plaintiffs' First Amendment rights and that it was "clearly
 8 established" that an arrest supported by probable cause, but made in retaliation for protected
 9 speech violates the First Amendment.

11 **C. REMAINING ISSUES FOR TRIAL**

12 **1. Remaining claims/issues for trial**

13 The only remaining claim/issue for trial is whether the Plaintiffs' First Amendment
 14 rights were violated when Detective Tucker arrested the Plaintiffs in retaliation for their
 15 chalked messages and/or their involvement in anti-police organizations.

16 **2. Dismissed claims and parties**

17 1. Plaintiffs' Fourth Amendment claim has been dismissed. (ECF No. 36.)
 18 2. Plaintiffs' false imprisonment claim has been dismissed. (*Id.*)
 19 3. Plaintiffs' unlawful detention claim has been dismissed. (*Id.*)
 20 4. Plaintiffs' substantive and procedural due process claim has been dismissed.
 21 (*Id.*)
 22 5. Defendant Wallace has been dismissed from the lawsuit. (ECF No. 207.)
 23 6. Defendant Liberty has been dismissed from the lawsuit. (*Id.*)
 24 7. Plaintiff's *Monell* claim against LVMPD has been dismissed. (*Id.*)
 25 8. Defendant LVMPD has been dismissed from the lawsuit. (*Id.*)
 26 9. Plaintiffs' negligent hiring, training and supervision claim has been dismissed
 27 (*Id.*)

1 10. Plaintiffs' Intentional Infliction of Emotional Distress and Negligent Infliction
 2 of Emotional Distress claims have been dismissed. (*Id.*)

3 11. Plaintiff Gail Sacco is no longer a Plaintiff due to death. (ECF No. 228.)

4 **II. STATEMENT OF JURISDICTION**

5 This Court has jurisdiction over this lawsuit because Plaintiffs' remaining claim
 6 brought pursuant to 42 U.S.C. §1983.

7 **III. STATEMENT OF ADMITTED/UNCONTESTED FACTS**

8 1. Detective Tucker was acting in the course and scope of his employment as an
 9 LVMPD detective at all times relevant to this lawsuit.

10 2. Plaintiffs were members of the Sunset Activist Collective, a local activist
 11 group, and are associated with CopBlock, an activist group critical of law enforcement.

12 3. Since 2011, Plaintiffs have conducted protests by using chalk to write anti-
 13 police messages on the sidewalks in Las Vegas, Nevada.

14 4. On June 8, 2013, Plaintiffs chalked anti-police messages in front of LVMPD
 15 headquarters. Sgt. Wallace issued citations to each Plaintiff for violation of Nevada's graffiti
 16 statute - NRS § 206.330. Plaintiff Patterson asked to speak with Sgt. Wallace's supervisor,
 17 Lieutenant Liberty. After arrival, Lt. Liberty told the Plaintiffs that chalking was illegal but
 18 they would not be cited if they cleaned the sidewalk. Plaintiffs disagreed that chalking was
 19 illegal, refused to clean the sidewalk, and were issued citations.

20 5. Detective Tucker was assigned to investigate the citations.

21 6. Detective Tucker researched Plaintiffs' messages and monitored their social
 22 media. In doing so, he learned that Plaintiffs were affiliated with anti-police organizations.

23 7. On July 13, 2013, Plaintiffs Ballentine and Patterson chalked anti-police
 24 messages outside LVMPD's headquarters. Although LVMPD officers witnessed the chalking,
 25 the Plaintiffs were not cited or talked to.

26 8. On July 18, 2013, Plaintiffs chalked anti-police messages at the Regional
 27 Justice Center. The chalking spanned approximately 1,000 square feet. Detective Tucker

1 witnessed and photographed the messages. He discussed the messages with Plaintiff
 2 Ballentine, but he did not stop or cite the Plaintiffs.

3 9. On August 9, 2013, Detective Tucker drafted warrants for Plaintiffs' arrests.
 4 Detective Tucker's warrant outlined the Plaintiffs' prior alleged chalking activities, described
 5 the messages being chalked, and the surfaces to which chalk was applied.

6 10. The District Attorney accepted the warrants and submitted them to a Justice of
 7 the Peace who approved arrest warrants for each Plaintiff.

8 11. On August 10, 2013, Plaintiffs were arrested.

9 12. The District Attorney ultimately dropped all charges.

10 **IV. STATEMENT OF UNCONTESTED FACTS**

11 The following facts, although not admitted, will not be contested at trial by evidence
 12 to the contrary:

13 1. The Plaintiffs' anti-police messages are protected speech under the First
 14 Amendment.

15 **V. STATEMENT OF CONTESTED ISSUES OF FACT**

16 The following are issues of fact to be tried and determined at trial.

17 1. Whether Detective Tucker had probable cause to obtain the arrest warrants.

18 2. Whether the "loss" due to chalking was over \$250.00 regarding the incidents
 19 for which the Plaintiffs were arrested and incarcerated.

20 3. Whether, in response to increased chalking activity and incurred cleaning
 21 costs, the City of Las Vegas indicated to LVMPD that it was willing to prosecute if LVMPD
 22 observed someone chalking the sidewalks.

23 4. Whether Detective Tucker's arrest warrants were obtained by Detective
 24 Tucker in retaliation for the Plaintiffs' chalking of anti-police messages and/or due to
 25 Plaintiffs' lawful involvement in anti-police organizations (*i.e.*, Detective Tucker's subjective
 26 intent for obtaining the arrest warrants).

27 5. Whether the Plaintiffs suffered damages and, if so, the amount of Plaintiffs'
 28 damages.

1 6. Whether Detective Tucker's actions were the proximate cause of Plaintiffs'
 2 claimed damages.

3 **VI. STATEMENT OF CONTESTED ISSUES OF LAW**

4 The following are issues of law to be tried and determined at trial.

5 1. Whether Detective Tucker is protected by qualified immunity.
 6 2. Whether Detective Tucker acted unconstitutionally by including the Plaintiffs'
 7 chalked anti-police messages in Declaration of Arrest used to obtain the arrest warrants.

8 3. Whether Detective Tucker acted unconstitutionally by failing to include
 9 sufficient or accurate facts related to the elements of the alleged offense including: the amount
 10 of actual loss, whether or not the chalking was without permission and how the chalk defaced
 11 the property at issue.

12 4. Whether a neutral magistrate's independent determination of probable cause
 13 insulates Detective Tucker from liability from a retaliatory arrest claim.

14 5. Whether it is unlawful to have drawn chalk on a sidewalk owned and
 15 maintained by the City of Las Vegas in 2013.

16 6. Whether Plaintiffs can meet their burden to introduce medical records and
 17 medical testimony regarding their claimed damages.

18 **VII. EXHIBITS**

19 A. **THE FOLLOWING EXHIBITS ARE STIPULATED INTO EVIDENCE
 20 IN THIS CASE AND BE SO MARKED BY THE CLERK**

21 1. **Joint Exhibits**

22 1. Booking Voucher (Bates No. LVMPD 00001);
 23 2. Declaration of Arrest - Ballentine (Bates No. LVMPD 00002);
 24 3. Incident Recall for 7/18/13 (Bates No. LVMPD 00004-00005);
 25 4. Justice Court Disposition Notice – Kelly Patterson (Bates No. LVMPD
 00007);
 26 5. Property Report Kelly Patterson (Bates No. LVMPD 00009);
 27 6. Temporary Custody Record – Ballentine (Bates No. LVMPD 00011);

1 7. Unit Log for 7/18/13 (Bates No. LVMPD 000013);
2 8. Witness List (Bates No. LVMPD 000014-000015);
3 9. Brian Ballentine Arrest Records:
4 a. Inmate Assessments (Bates No. LVMPD 000016)
5 b. Temporary Custody Record (Bates No. LVMPD 000017)
6 c. Justice Court – Notice of Bond Acceptance (Bates No. LVMPD 000018)
7 d. Agreement to Appear in Court and to Waive Extradition After Admissions
8 to Bail (Bates No. LVMPD 000019)
9 e. CCDC Arrest Warrant Abstract (Bates No. LVMPD 000020)
10 f. Inventory of Personal Property (Bates No. LVMPD 000021)
11 g. Bulk Property Tag (Bates No. LVMPD 000022)
12 h. Housing Locations by Inmate (Bates No. LVMPD 000023)
13 i. Inmate Demographics (Bates No. LVMPD 000024)
14 j. NaphCare Mental Health Evaluation (Bates Nos. LVMPD 000025-
15 000059)
16 k. Booking Funds (Bates No. LVMPD 000060)
17 10. Kelly Patterson Arrest Records:
18 a. Inmate Assessments (Bates No. LVMPD 000061)
19 b. Temporary Custody Record (Bates No. LVMPD 000062)
20 c. Clark County Pretrial Services Release Agreement (Bates No. LVMPD
21 000063)
22 d. CCDC Arrest Warrant Abstract (Bates No. LVMPD 000064)
23 e. Inventory of Personal Property (Bates No. LVMPD 000065)
24 f. Bulk Property Tag (Bates No. LVMPD 000066)
25 g. Housing Locations by Inmate (Bates No. LVMPD 000067)
26 h. Inmate Demographics (Bates No. LVMPD 000068)
27 i. NaphCare Mental Health Evaluation (Bates Nos. LVMPD 000069-
28 000076)

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1 j. Booking Funds (Bates No. LVMPD 000077)

2 11. Photographs (Bates Nos. LVMPD 000081-000322);

3 12. 7/18/13:

4 a. Case Report (Bates Nos. LVMPD 000366-000376);

5 b. Property Report (Patterson) (Bates No. LVMPD 000377);

6 c. City of Las Vegas Official Damage Estimate (Bates No. LVMPD 000378);

7 d. City of Las Vegas Official Damage Estimate with Photos (Bates Nos.

8 LVMPD 000379-000408);

9 e. Thumbnail photos for Event #LLV130608002756 (Bates Nos. LVMPD

10 000409-000415);

11 f. Declaration of Warrant/Summons (Patterson) for 7/13/13, 7/16/13, 7/18/13

12 (Bates Nos. LVMPD 000416-000420);

13 13. 7/31/13:

14 a. Patterson Justice Court Disposition Notice for 7/31/13 Warrant (Bates No.

15 LVMPD 000421);

16 14. 8/1/2013:

17 b. Dazo Justice Court Disposition Notice for 8/1/13 Warrant (Bates No.

18 LVMPD 000422);

19 15. Arrest Warrant (Dazo) (Bates Nos. LVMPD 000423-000426);

20 16. Temporary Custody Record (Dazo) (Bates Nos. LVMPD 000427);

21 17. Hand-written note (Bates No. LVMPD 000428);

22 18. Arrest Warrant (Patterson) (Bates Nos. LVMPD 000429-000430);

23 19. Arrest Warrant (Ballentine) (Bates Nos. LVMPD 000431-000432);

24 20. Temporary Custody Record (Patterson) (Bates No. LVMPD 000433);

25 21. Declaration of Arrest (Patterson) (Bates No. LVMPD 000434);

26 22. Temporary Custody Record (Ballentine) (Bates No. LVMPD 000435);

27 23. Declaration of Arrest (Ballentine) (Bates No. LVMPD 000436);

28 24. Property Report (Patterson) (Bates No. LVMPD 000437);

1 25. ID Card (Dazo) (Bates Nos. LVMPD 000438-000439);
2 26. LVMPD Witness List (Bates Nos. LVMPD 000440-000441);
3 27. Gangs/Graffiti Crime Unit File (Bates Nos. LVMPD 000462-000667);
4 28. Andrew Burnett Emails (Bates Nos. LVMPD 000668-000788);
5 29. Christopher Tucker Emails (Bates Nos. LVMPD 000789-000805); (*see also*
6 00484-000500; 000625);
7 30. PCA Cleaning Concrete Article (Bates Nos. LVMPD 000836-000837);
8 31. LVMPD Department Manual Parts 4-7 (7-26-13) (Bates Nos. LVMPD
9 001195-001363);¹
10 32. Graffiti Pamphlet (Bates Nos. LVMPD 001364-001365);
11 33. Graffiti Investigations Pamphlet (Bates Nos. LVMPD 001366-001367);
12 34. Graffiti Investigations PowerPoint and Quiz (Bates Nos. LVMPD 001368-
13 001406);
14 35. General Response to Graffiti Calls – Pamphlet (Bates Nos. LVMPD 001407-
15 001408);
16 36. LVMPD Photographs – 7/18/2013 (LVMPD 002239-002307);

17 **B. AS TO THE FOLLOWING ADDITIONAL EXHIBITS, THE PARTIES
18 HAVE REACHED THE FOLLOWING STIPULATIONS.**

19 1. **Plaintiff's Exhibits**

20 n/a

21 2. **Defendants' Exhibits**

22 n/a

23
24
25
26
27
28 ¹ See Fourth Supplemental Privilege Log regarding redactions.

1 **C. AS TO THE FOLLOWING EXHIBITS, THE PARTY AGAINST
2 WHOM THE SAME WILL BE OFFERED OBJECTS TO THEIR
3 ADMISSIONS UPON THE GROUNDS STATED.**

4 **1. Plaintiff's Exhibits**

5 1. Emails between Detective Scott Black, Assistant Deputy City Attorney Ben
6 Little, and Sergeant Drew Burnett in June and July 2013. (LVMPD 00498-00500);

7 **2. Defendants' Exhibits**

8 1. Lt. Liberty Documents: Hand-Written Notes of Lt. Liberty (redacted – see
9 privilege log) (Bates Nos. LVMPD 000078-000080).

10 2. 10/22/12:

11 a. Case Report (Bates Nos. LVMPD 000323-000337)

12 b. Field Interview (Bates Nos. LVMPD 000338-000340)

13 3. Criminal History Printout (Patterson) 7/17/13 (Bates Nos. LVMPD 000442-
14 000443) (CONFIDENTIAL);

15 4. 6/8/13:

16 a. Case Report (Bates Nos. LVMPD 000341-000349);

17 b. Patterson Citation Voided (Bates No. LVMPD 000350);

18 c. Ballentine Citation (Bates Nos. LVMPD 000351-000352);

19 d. Ballentine Citation Voided (Bates Nos. LVMPD 000353-000354);

20 e. Dazo Citation (Bates Nos. LVMPD 000355-000356);

21 f. Dazo Citation Voided (Bates No. LVMPD 000357);

22 g. Case Report (Bates Nos. LVMPD 000358-000365);

23 5. ID Card (Ballentine) 7/17/13 (Bates Nos. LVMPD 000446-000447)
24 (CONFIDENTIAL);

25 6. DMV Query (Patterson) 7/17/13 (Bates Nos. LVMPD 000448-000450)
26 (CONFIDENTIAL);

27 7. NCJIS Inquiry (Patterson) 7/17/13 (Bates No. LVMPD 000451)
28 (CONFIDENTIAL);

1 8. NCIC Inquiry (Patterson) 7/17/13 (Bates No. LVMPD 000452)
2 (CONFIDENTIAL);

3 9. Person Base Record (Ballentine) 7/17/13 (Bates No. LVMPD 000453)
4 (CONFIDENTIAL);

5 10. DMV Query (Ballentine) 7/17/13 (Bates No. LVMPD 000454)
6 (CONFIDENTIAL);

7 11. NCIC Inquiry (Ballentine) 7/17/13 (Bates No. LVMPD 000455)
8 (CONFIDENTIAL);

9 12. NCJIS Inquiry (Ballentine) 7/17/13 (Bates No. LVMPD 000456)
10 (CONFIDENTIAL);

11 13. NCIC/NCJIS Inquiry (Dazo) 7/17/13 (Bates Nos. LVMPD 000457-000459)
12 (CONFIDENTIAL);

13 14. ID Card (Dazo) 7/18/13 (Bates Nos. LVMPD 000460-000461)
14 (CONFIDENTIAL);

15 15. Det. Scott Black Emails (Bates Nos. LVMPD 000806-000835);

16 16. Employment File for Tucker (Bates Nos. LVMPD 000838-000865)
17 (CONFIDENTIAL);

18 17. Employment File for Liberty (Bates Nos. LVMPD 000866-000995)
19 (CONFIDENTIAL);

20 18. Employment File for Wallace (Bates Nos. LVMPD 000996-001135)
21 (CONFIDENTIAL);

22 19. Training History for Tucker (Bates Nos. LVMPD 001136-001149);

23 20. Training History for Liberty (Bates Nos. LVMPD 001150 -001167);

24 21. Training History for Wallace (Bates Nos. LVMPD 001168-001183);

25 22. LVMPD Policy - Department Response to Criminal Street Gang (Bates Nos.
26 LVMPD 001184-001188);

27 23. Printout: Officer Complaint History for Liberty (REDACTED) (Bates Nos.
28 LVMPD 001189-001191) (CONFIDENTIAL);

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1 24. Printout: Officer Complaint History for Wallace (REDACTED) (Bates No.
2 LVMPD 001192) (CONFIDENTIAL);

3 25. Printout: Officer Complaint History for Tucker (Bates No. LVMPD 001193)
4 (CONFIDENTIAL);

5 26. Printout: Brady Findings for Tucker, Wallace and Liberty (Bates No. LVMPD
6 001194) (CONFIDENTIAL);

7 27. Graffiti Calls – PowerPoint (Bates Nos. LVMPD 001409-001439); and

8 28. CAD Reports referring Chalk (REDACTED) (Bates Nos. LVMPD 001440-
9 001443);²

10 29. Citation and Property Report (LVMPD 001444-001446);

11 30. Photographs regarding Digital Evidence for Event #LLV140813003835
12 (LVMPD 001447-001452);

13 31. CAD Report for Event #LL140813003835 (LVMPD 001453-001455);

14 32. Gail Sacco's Facebook post dated July 19, 2013 (LVMPD 001456);

15 33. Naphcare Contract and Amendments (LVMPD 001457-001525);

16 34. 4/105.11 Records Maintenance and Retention Policy (LVMPD 001526);

17 35. Retention Destruction Schedule Policy (LVMPD 001527-001575);

18 36. Incident Recall for 06/08/2013 (LVMPD 001576-001577);

19 37. Email exchange between LVMPD counsel and Andrew Burnett (LVMPD
20 000759);

21 38. Documents obtained from LVMPD Internal Affairs (LVMPD 001578-001785)
22 (CONFIDENTIAL);

23 a. Wallace IA records (previously produced on 12/10/15: LVMPD
24 001748-1760; 001772-1781; 001782-001784 – with redactions per Court Order at ECF No.
25 107).

26 39. DVD of July 18, 2013 Regional Justice Center Video (LVMPD 001786);

28 2 See Fifth Supplement to Privilege Log.

1 40. Eldora Medical Associates/Dr. Peprah Medical Records (LVMPD 001787-
 2 001829) (CONFIDENTIAL);

3 41. Valley View Health Center/Dawn Lantz, APN Medical Records (LVMPD
 4 001830-001853) (CONFIDENTIAL);

5 42. The Olympia Free Clinic Medical Records (LVMPD 001854-001863)
 6 (CONFIDENTIAL);

7 43. 2013 First Friday Permits (LVMPD 001864-001899);

8 44. Clark County School District Records (LVMPD 001900-002052);

9 45. LVMPD Detective Report for Event #LLV140813003835 (LVMPD 002053-
 10 002055);

11 46. Behavioral Health Resources – Medical Records (LVMPD 002056-002085);

12 47. Incident Recall – 10/22/12 (LVMPD 002086-002089);

13 48. Incident Recall – 7/14/13 (LVMPD 002090);

14 49. CSI Report - 10/22/12 (LVMPD 002091);

15 50. LVMPD Photographs – 10/22/12 (LVMPD 002092-002160);

16 51. LVMPD Photographs – 6/08/2013 (LVMPD 002161-002207);

17 52. John Liberty Email (LVMPD 002208-002213);

18 53. Documents produced by D.A. Office pursuant to Plaintiffs' November 18,
 19 2015 Subpoena Duces Tecum;

20 54. 2013 First Friday Permits;

21 55. Michael Wallace Email (LVMPD 002214-002234);

22 56. Gang Activity Reports (LVMPD 002235-002238);

23 57. LVMPD Policy: Demonstrations/Activities (LVMPD 002308); and

24 58. Henkel Photograph (LVMPD 002309).

25 Plaintiffs object to the above exhibits on relevance, foundation, and hearsay.

26 **VIII. DEPOSITIONS**

27 The parties will offer the depositions for witnesses who are unavailable at the time of
 28 trial or for impeachment purposes.

1 **IX. OBJECTIONS TO DEPOSITIONS**

2 The parties do not object to the use of depositions for impeachment purposes.

3 **X. WITNESSES**

4 **A. PLAINTIFF**

5 The Plaintiff anticipates calling the following witnesses at trial:

6 1. Brian Ballentine, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada

7 89101

8 2. Catalino Dazo, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada

9 89101

10 3. Kelly Patterson, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada

11 89101.

12 4. Detective Christopher Tucker, c/o Marquis Aurbach, 10001 Park Run Drive,
13 Las Vegas, Nevada 89145

14 5. Bernard G. Little, 5381 Painted Mirage, Las Vegas, Nevada 89149.

15 The Plaintiff does not anticipate calling the following witnesses but, reserves the right
16 to do so should the need arise.

17 1. Dave Schissler, City of Las Vegas, Graffiti Abatement Departments, 400
18 Stewart Avenue, 2nd Floor, Las Vegas, Nevada 89101.

19 The Plaintiff reserves the right to call any witness identified by the defendant as a
20 witness or potential witness as listed below.

21 **B. DEFENDANTS**

22 The defendants anticipate calling the following witnesses at trial:

23 1. Detective Christopher Tucker, c/o Marquis Aurbach, 10001 Park Run Drive,
24 Las Vegas, Nevada 89145

25 2. Lieutenant Michael Wallace (Ret.), c/o Marquis Aurbach, 10001 Park Run
26 Drive, Las Vegas, Nevada 89145

27 3. Lieutenant John Liberty, c/o Marquis Aurbach, 10001 Park Run Drive, Las
28 Vegas, Nevada 89145

1 4. Brian Ballentine, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada
2 89101

3 5. Catalino Dazo, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada
4 89101

5 6. Kelly Patterson, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada
6 89101

7 7. Christopher J. Lalli, Esq., Assistant District Attorney, Office of the District
8 Attorney, 200 Lewis Avenue, Las Vegas, Nevada 89101, (702) 671-2501

9 8. Scott Mitchell, Esq., (address treated as confidential for privacy/safety
10 purposes)

11 9. Jack Ryan, Expert Witness.

12 The defendants do not anticipate calling the following witnesses but, reserve the right
13 to do so should the need arise.

14 1. Robert Brown (P#9307), Las Vegas Metropolitan Police Dept., 400 S. Martin
15 Luther King, Las Vegas, Nevada 89106, (702) 828-3111

16 2. Det. P. Scott Black (P#5479), Las Vegas Metropolitan Police Dept., 400 S.
17 Martin Luther King, Las Vegas, Nevada 89106, (702) 828-3309]

18 3. Lisa Cologna, Deputy Marshal, Eighth Judicial District, Regional Justice
19 Center, 200 Lewis Avenue, Las Vegas, Nevada, (702) 671-4571,
20 colognal@clarkcountycourts.us

21 4. Jothan Peterson (P#7377), Clark County Detention Center, c/o Las Vegas
22 Metropolitan Police Dept., 400 S. Martin Luther King, Las Vegas, Nevada 89106, (702) 828-
23 3309

24 5. Levi Hancock (P#7083), Las Vegas Metropolitan Police Dept., 400 S. Martin
25 Luther King, Las Vegas, Nevada 89106, (702) 828-3111

26 6. Dave Schissler, City of Las Vegas, Graffiti Abatement Departments, 400
27 Stewart Avenue, 2nd Floor, Las Vegas, Nevada 89101

1 7. Captain William Teel, Las Vegas Metropolitan Police Department, 400 S.
2 Martin Luther King, Las Vegas, Nevada 89106, (702) 828-3111

3 8. Chance McClish, Las Vegas Metropolitan Police Department., 400 S. Martin
4 Luther King, Las Vegas, Nevada 89106, (702) 828-3111,

5 9. Andrew Keller (P#8796), Las Vegas Metropolitan Police Department, 400 S.
6 Martin Luther King, Las Vegas, Nevada 89106, (702) 828-3111

7 10. Jeffrey L. McNeil (P#13340), Las Vegas Metropolitan Police Dept., 400 S.
8 Martin Luther King, Las Vegas, Nevada 89106, (702) 828-3111

9 11. David W. Larrington, Las Vegas Metropolitan Police Dept., 400 S. Martin
10 Luther King, Las Vegas, Nevada 89106, (702) 828-3111

11 12. Dody Bateson, Public Works Administrator, City of Las Vegas, 333 N.
12 Rancho, Las Vegas, Nevada 89106, (702) 229-6737

13 13. Joseph M. Talamanates, Painter, Department Operations and Maintenance,
14 City of Las Vegas, 333 N. Rancho Drive, Las Vegas, Nevada 89106, (702) 229-1030

15 14. Jesse Hill, Rapid Response Team Member, Graffiti Abatement Program,
16 Department Operations and Maintenance, City of Las Vegas, 333 N. Rancho Drive, Las
17 Vegas, Nevada 89106, (702) 229-1030

18 15. Jerry Walker, City of Las Vegas, Director of Department of Operations and
19 Maintenance, 333 N. Rancho Drive, Las Vegas, Nevada 89106, (702) 229-1030

20 16. Captain Brett Primas, Las Vegas Metropolitan Police Dept., 400 S. Martin
21 Luther King, Las Vegas, Nevada 89106, (702) 828-3111

22 17. Dan Phillips, Somerset Academy Charter Schools, 4650 Losee Road, North
23 Las Vegas, NV 89081

24 18. David M. Nixon, MSW, LSWAIC, MHP, Behavioral Health Resources, 3857
25 Martin Way E., Olympia, WA 98506, (360) 704-7170

26 **XI. TRIAL DATES**

27 Counsel for both parties have met and submit the following two trial dates:

28 1. April 2023.

1 2. June 2023.

2 It is expressly understood by the undersigned that the Court will set the trial of this
3 matter on one (1) of the agreed-upon dates if possible, if not, the trial will be set at the
4 convenience of the court's calendar.

5 APPROVED AS TO FORM AND CONTENT this 5th day of August, 2022.

6 MARQUIS AURBACH

MCLETCHIE LAW

7 By: /s/ Craig R. Anderson
8 Craig R. Anderson, Esq.
9 Nevada Bar No. 6882
10 10001 Park Run Drive
Las Vegas, Nevada 89145
11 Attorney for Defendants

By: /s/ Margaret A. McLetchie
Margaret A. McLetchie, Esq.
Nevada Bar No. 10931
602 South Tenth Street
Las Vegas, Nevada 89101
12 Attorney for Plaintiffs

13 **XII. TRIAL**

14 It is estimated that the trial herein will take a total of 5 days.

15 **XIII. ACTION BY THE COURT**

16 This case is set down for jury trial on the stacked calendar on April 10, 2023, at 9:00
a.m. in Las Vegas Courtroom 6C. Calendar Call shall be held on April 4, 2023, at 9:00 a.m.
in Las Vegas Courtroom 6C.

17 **IT IS SO ORDERED:**

18 Dated: August 8, 2022


19
20 ANDREW P. GORDON
21 UNITED STATES DISTRICT JUDGE

22 NOTICE: Due to the unusually large number of complex criminal cases set for lengthy trials before
23 this Court, civil trials may possibly be held in a trailing status for months or be assigned to another
24 District Court Judge for trial. Therefore, the Court strongly urges the parties to consider their option
25 to proceed before a Magistrate Judge pursuant to Local Rule IB 2-2, in accordance with 28 USC
Section 636 and FRCP 73.

26
27 The Clerk shall provide the parties with a link to AO 85 Notice of Availability, Consent and Order of
28 Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge form on the Courts website.